





stating that the Defendant laid no foundation for its scientific accuracy. In this case Dr. Clarke's reliance on the Torg data is limited to historical perspective and not to his opinions pertaining to the relevant period of time or the utility of the VSR-4 helmet.

It is significant to note, however, that Dr. Clarke's conclusions and opinions based on historical data back to 1970 have wide acceptance in the field of sports safety and both the survey results and conclusions therefrom have been accepted by the sponsors of the 1978 Annual Survey of Football Fatalities; American Football Coaches' Association, the National Collegiate Athletic Assoc., the National Federation of State High School Association and the Consumer Production Safety Commission. (See Ex 1, 45 Fed. Reg. #197, 9/24/80, page 63327, findings of the Consumer Product Safety Commission citing the National Football Head & Neck Injury Registry data and conclusions along with the National Athletic Injury Illness Reporting System (NAIRS) and finding "the final report of this CPSC supported effort stated that the evidence does not support helmet causation of "head injuries". In addition, the NAIRS report stated no particular "hard-shelled" helmet was associated with a disproportionate number of concussions ...", Id at 63327.

The main data source for Clarke's analysis is the National Football Head and Neck Injury Registry, now the National Center for Catastrophic Sports Injury Research. In 1980 Frederick O. Mueller, PhD, University of North Carolina at Chapel Hill (UNC-CH) was appointed by the American Football Coaches Association (AFCA), the National Collegiate Athletic Association (NCAA) and the National Federation of State High School Association (NFSHSA) to continue research began by Dr. Carl Blythe at that institution under the new title "American Survey of Football Injury Research". As



the testimony of Dr. Clarke will show this report commissioned by the NCAA, AFCA & NFSA is considered trustworthy and is relied upon by experts in the field concerned with sports safety issues. The annual report is reviewed and relied upon each year by coaches, trainers, medical practitioners and epidemiologists in making decisions on rule changes, coaching techniques, equipment selection and risk factors associated with football and other sports now included in the registry. The data collected by Dr. Mueller's organization forms the basis of numerous peer reviewed publications widely accepted in the field including publications such as "Catastrophic Injuries in High School & College Sports", Muller, Cantu, Van Camp, Human Kinetics - Sports Science Monograph Series, 1996.

Dr. Clarke's conclusions and opinions have wide acceptance, Dr. Clarke's testimony that the relative infrequency of catastrophic brain injuries in high school football is inconsistent with the allegation of a defective football helmet in common use (such as the VSR-4) is not a medical opinion, as Plaintiffs contend, but an epidemiological one which refutes Dr. Stalnaker's opinion that a person wearing a VSR-4 helmet has an 8 to 18% risk of receiving an AIS injury of 4 or greater, which could include an injury such as Jose Rodriguez's (SF 357-359). In fact Dr. Clarke's testimony is one of the key factors mitigating against the credibility of Dr. Stalnaker's conclusion since the Plaintiffs' expert opinions are contrary to statistical and epidemiological evidence, long recognized in the field.

WHEREFORE, PREMISES CONSIDERED, defendants pray that the Court deny Plaintiffs' Motion in Limine pertaining to Defendant's Epidemiologist and statistical evidence and for all such further relief, general, special, legal and equitable which

might be appropriate.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above was forwarded by  
telefax transmission and certified mail, return receipt requested to counsel of record on  
this the 25<sup>th</sup> day of April, 2001.

Mr. Rex Blackburn  
**EVANS, KEANE L.L.P.**  
1101 W. River Street, Suite 200



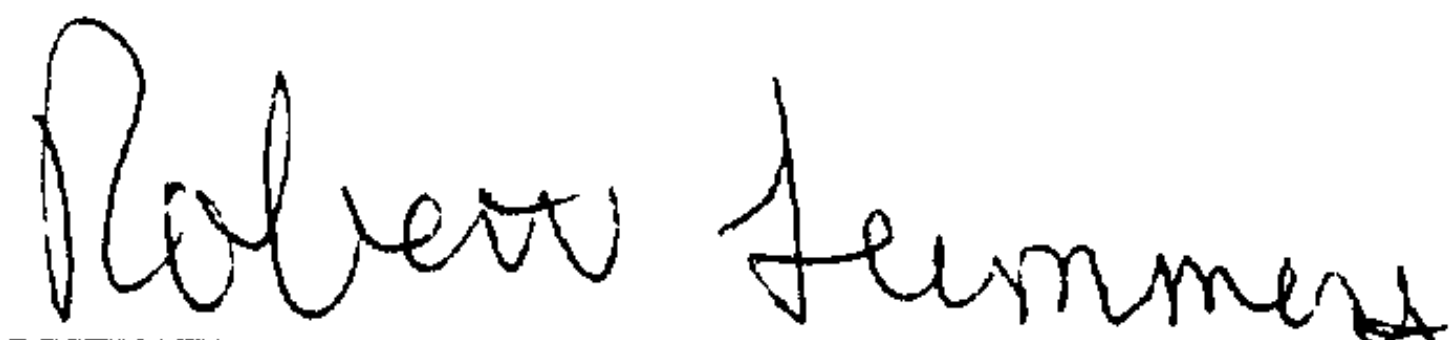
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A handwritten signature in cursive script that reads "Robert Summers". The signature is written in dark ink and is positioned above a horizontal line.

Robert Summers

04/25/01 09:30A P.005

FROM : WHO'S YOUR DADDY??

FAX NO. : 2104922755

Apr. 25 2001 09:25AM P1

9-24-00  
Vol. 45 No. 187  
Pages 63261-63478

Wednesday  
September 24, 1980

# federal register

## Highlights

**Briefings on How To Use the Federal Register**—For details on the resumption of briefings in Washington, D.C., see announcement in the Reader Aide section at the end of this issue.

**63476 Occupational Safety and Health** Labor/OSHA proposes rulemaking record for lead standard; comments by 10-17-80; hearings on 11-6, 11-8 and 11-7-80 (Part IV of this issue)

**63488 Wage and Price Controls** CWPB extends second-year price standards; effective 10-1-80; comments by 10-30-80 (Part III of this issue)

**63263 Excise Taxes** Treasury/IRS issues interim rule and proposed rule for determining base prices for (let 2 and tier 2 oil; effective with respect to oil removed after 2-28-80; comments by 11-26-80 (2 documents)

**63286 Truth in Lending** FRB proposes staff interpretation regarding security interest disclosures in closed end credit transactions; comments by 10-17-80

**63410 Treasury Notice** Treasury/DoT announces the interest rate on Series W-1980 will be 11% percent

**63285 Football Helmets** CPSC denies petition requesting issuance of standards

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04/25/01 09:30A P.006

FROM : WHO'S YOUR\_DADDY??

FAX NO. : 2104922755

Apr. 25 2001 09:26AM P2

85328

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is being published in response to a request from the ICSP.

The ICSP has reviewed a proposed national standards policy for the United States developed by the National Standards Policy Advisory Committee (NSPAC), established in 1977 under the auspices of the American National Standards Institute, and published in December 1979. At its plenary session on June 11, 1980 the ICSP adopted the following resolution, with no member dissenting but with one abstention, regarding just the policy aspects of the NSPAC document. (It made no observation with regard to the recommended implementation plan for the proposed national policy which was included as a separate and distinct part of the NSPAC report.)

Resolved, that the ICSP recognizes the efforts of the National Standards Policy Advisory Committee (NSPAC) as a commendable contribution to the establishment and implementation of an effective U.S. national standards policy, and offers to work cooperatively with the private sector to achieve the NSPAC's stated objectives in a timely fashion. It should be noted, however, that the ICSP is disappointed at the delay of the private sector in implementing reforms such as contained in this policy, and would have preferred a stronger statement regarding duplication in the private sector and provision for a stronger central management structure in the private sector.

As a matter of further information it should be noted that the NSPAC report which was issued over a year before promulgation of OMB Circular A-119 on January 17, 1980, contains recommendations which may be at variance with certain of the policy statements and administrative directives in the Circular. For example, the NSPAC report recommended that the government should give preference in its procurement activities to companies prepared under the standards development process which NSPAC recommended be adopted. The Circular makes no such broad requirement, but only urges Federal departments and agencies to give preference, subject to their administrative discretion, to the use of voluntary standards in procurement activities.

As another example of variance, the NSPAC report recommended that there should be a Federal appeals procedure available for those impacts or individuals who believe they have been or will be disadvantaged by a certain voluntary standard or the lack thereof. No distinction is made in that proposal as to whether the appeals procedure should be available to review both substantive and procedural matters. The Circular provides for a voluntary dispute

resolution service which is limited to procedural issues.

In the light of such examples of variance it is suggested that anyone interested in the implementing recommendations contained in the NSPAC report would be well advised to compare them with the Federal policies and directives set forth in OMB Circular A-119.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology, and Innovation.

September 18, 1980.

(PS Form No. 4240-72, dated 9-22-79, GSA GEN. REG. NO. 2710-10-9)

#### CONSUMER PRODUCT SAFETY COMMISSION

(Petition No. CP 77-7)

Football Helmets; Denial of Petition

Agency: Consumer Product Safety Commission.

ACTION: Denial of petition.

**SUMMARY:** The Commission denies a petition requesting it to issue a consumer product safety standard for football helmets in order to reduce the risk of head, neck, and spinal injuries which occur during football play. The Commission denies the petition because it does not believe that a mandatory standard is necessary at this time to reduce any risk of injury associated with football helmets. The Commission notes that a number of organizations are involved in voluntary standards development in this area. In addition, the rate of football deaths from head injuries and the incidence of neck injuries have decreased in recent years due to such factors as rule changes against hitting and spearing, improved coaching and officiating, and the use of helmets certified to meet voluntary standards.

**FOR FURTHER INFORMATION CONTACT:** Douglas L. Noble, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, 202-452-6452.

**ADDRESSES:** Copies of the petition and staff's briefing materials on the petition may be obtained from the Office of the Secretary, Consumer Product Safety Commission, 1115 18th Street, N.W., Washington, D.C. 20207.

**Supplementary Information:**

#### 1. Background

Section 26 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2056, provides that any information upon which petition the Consumer Product Safety

Commission (CPSC) to begin a proceeding to issue, amend, or revoke a consumer product safety standard or law, Section 10 also provides that if the Commission denies such a petition, it shall publish its reasons for denial in the Federal Register.

By letter dated December 17, 1979, and supplemented by a letter dated January 30, 1980, Dr. A.C. Larcher of Chicago, Illinois petitioned (CP 77-7) the Commission to establish mandatory safety standards for football helmets and shoes. In his submission, Dr. Larcher claimed that the application of cylinder air chambers covered by a softened plastic exterior shell on helmets would reduce head, neck, and spinal injuries.

On March 28, 1980 the Commission denied that part of the petition relating to football shoes on the basis that available information did not support a determination that the design of the shoes contributed to football injuries. (See 45 FR 8049). Action was deferred on that part of the petition relating to helmets because the Commission believed that further investigation by its staff was necessary before a decision on any mandatory standard for helmets could be made.

On January 15, 1980, Frederick Zepeda requested that the Commission ban football helmets with a hard finish. This submission was treated as a statement in support of the petition, CP 77-7, in accordance with the Commission's petitioning regulations at 18 CFR 112.22. (The Commission also received, in April of 1977, a submission from Durgard, Inc. requesting the issuance of a consumer product safety rule for football helmets and necessary parts. This submission was similarly treated as a statement in support of CP 77-7.)

#### 2. Commission Evaluation of the Petition

In analyzing this petition, the Commission considered all available information, including injury data, mechanisms of head and neck injuries, human factors implications of injuries, and voluntary standards activities on football helmets.

The Commission reviewed several sources of injury data associated with organized football at the high school and college levels. The Commission also considered data from the Commission's National Electronic Injury Surveillance System (NEISS) which includes injuries associated with both organized and unorganized football. The Commission did not consider injury data associated with professional football since the Commission is only concerned with



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injuries associated with consumer use of products.

Using NEISS, the Commission staff estimated that 107,588 emergency room treated injuries were associated with football activity during 1974. Over a year period (1974-1976), an annual average of 4.3% of the emergency room treated injuries associated with football involved the head, and 1.3% involved the neck. Thirty-three percent of the head injuries were concussions.

The 1978 Annual Survey of Football Fatalities published by the American Football Coaches' Association, the National Collegiate Athletic Association, and the National Federation of State High School Associations, and reviewed by the Commission staff showed that the rate of football fatalities from head injuries has decreased over the period 1970-1978. The sponsors of the survey attributed this decrease to (1) rule changes adopted at the end of the 1975 playing season which prohibit the use of the head ("butting" and "spearing") while tackling in high school and college football, (2) rules which require the wearing of only those helmets approved by the National Operating Committee on Standards for Athletic Equipment (NOCSAE) and (3) improved conditioning programs and skill techniques implemented by coaches and trainers.

The National Football Head and Neck Injury Registry, which was established for the purpose of studying head and neck injuries in organized football, stated that there has been a significant decrease in cervical spine injuries since the 1970 season. The Registry attributed this decrease to the rule changes barring the use of "spearing" and "butting" tackling techniques in high school and college football.

The National Athletic Injury/Illness Reporting System (NAIIRS), an association which continuously collects and interprets information on athletic injuries, examined 38,000 high school and college football players under both game and practice conditions during the years 1975 through 1977. The final report of this CPSC-supported effort stated that the evidence does not support helmet cessation of associated cervical spine or head injuries. In addition, the NAIIRS report stated that no particular "hard-shell" helmet was associated with a disproportionate number of concussions or cervical spine fractures within those examined. No skull fractures, permanent brain damage, or deaths were reported among the athletes surveyed in the first three years (1975-1977) of the NAIIRS study.

The Commission staff points out that although experts in the area of football safety theorize that "soft-shelled" helmets such as that suggested by the petitioner may offer better shock attenuation than hard-shelled helmets, such helmets may also induce more neck injuries since they may exhibit increased friction in contact with an opponent leading to possible neck twisting. In any case, the staff notes that no study has been done on injuries to players wearing soft-shelled helmets.

Two voluntary standard organizations have been actively involved in the development of test methods and performance criteria on football helmets. The National Operating Committee on Standards for Athletic Equipment (NOCSAE) has established a football helmet standard which was finalized in September, 1978. The American Society For Testing and Materials (ASTM) F. 433 Committee on headgear has approved a test method for shock-absorption characteristics of football helmets and is scheduled to ballot on a football helmet performance standard within six months with a decision on the final standard in the spring of 1981.

The National Collegiate Athletic Association (NCAA), the National Federation of State High School Associations (NFHS) and the National Junior College Athletic Association (NJCAA) rules committees have adopted rules requiring the wearing of only NOCSAE approved helmets in playing football. In addition, the Pop Warner Football League's rules for younger players require the wearing of NOCSAE-approved youth model helmets.

In addition, the Commission staff reported that there are many variables affecting an individual athlete's susceptibility to injury, regardless of the type of helmet that is worn. Some of the variables include age, development, physical condition, experience, supervision, equipment, psychological factors and training.

### 2. Conclusions

Based on the foregoing, the Commission has denied the petition requesting mandatory safety standards for football helmets. The Commission is taking this action because it does not believe that a mandatory Commission standard is necessary at this time to address any risk of injury presented by football helmets. The Commission points out that there is extensive involvement of various individuals and organizations in football-related medical research, data collection, and education and information efforts as well as two voluntary standards-development

organizations involved in developing test methods and performance criteria for football protective headgear. The Commission believes that in recent years there has been an increased concern for football safety that has been demonstrated by the widespread compliance with rules which (1) call for wearing only NOCSAE approved helmets in high school and college games and (2) forbid using the helmet to "butt", "spurt", or "run" an opponent.

The Commission vote to deny the petition was 4 to 1, with Commissioner Edith Mankind-Sloan dissenting. (Copies of the dissenting opinion are available in the office of the Secretary of the Commission.) The Commission notes that it remains concerned about football injuries associated with noncompetitive or unsupervised play and, in discussing the fiscal year 1981 Commission Operating Plan, plans to examine the current project on football sports equipment and decide whether to amend the project or establish a new project, to focus on football helmets not designed for competitive play.

Dated: September 18, 1980.

Edith M. Sloan,

Secretary, Consumer Product Safety Commission.

PS Do not stamp this notice on the envelope and return it to the Commission.

### Product Safety Advisory Council Meeting

Agenda: Consumer Product Safety Commission.

Subject: Notice of Meeting, Product Safety Advisory Council.

**SUMMARY:** This notice announces a meeting of the Product Safety Advisory Council on Thursday, October 2, 1980, 9 a.m.-4 p.m., and Friday, October 10, 1980, 9 a.m.-3 p.m. The meeting will be held at 1111 18th Street, NW, Washington, D.C. 20037, Third Floor Conference Room.

For further information contact: Barbara Rosenfeld, Director, Office of Public Participation, Office of the Secretary, Suite 300, 1111 18th Street, NW, Washington, D.C. 20037, 202/674-7700.

**IMPORTANT INFORMATION:** The Product Safety Advisory Council was established by Section 28 of the Consumer Product Safety Act, which provides that the Commission may consult with the Council before prescribing a consumer product safety rule or taking other action under the Act.

The meeting will include orientation for new members of PSAC. On Thursday, June 2, Council members will attend the regularly scheduled



04/25/01 7:30A P.008

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Commission meeting and in the afternoon will meet with the Commission to discuss the subject of results. On Friday, members will be briefed on CPSC budget, priorities, and field plans for FY 81, and will plan their program for the year.

The meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentation to the Product Safety Advisory Council should notify the Office of the Secretary (see address above) by October 8, 1980. The notification should list the name of the individual who will make the presentation, the person, the company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Council may be allowed by the presiding officer.

Dated September 18, 1980.

Redy E. Damm.

Secretary, Consumer Product Safety Commission.

PS Doc. 00-0000 Filed 9-23-80 9:44 AM  
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#### DEPARTMENT OF DEFENSE

##### Department of the Air Force

##### Scientific Advisory Board Meeting September 12, 1980

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will hold meetings on October 17 from 8:00 a.m. to 5:00 p.m. and on October 18 from 8:30 a.m. to 12:00 p.m. at Hanscom Air Force Base, Massachusetts in the Command Management Center, Building 1800.

The Group will receive classified briefings and hold classified discussions on selected Air Force Command, Control, and Communications Programs. The meetings concern matters listed in section 552(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and will be closed to the public.

For further information contact the Scientific Advisory Board at (202) 697-5404.

Carol M. Egan,

Air Force Federal Register, Liaison Officer.

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##### Scientific Advisory Board Meeting

September 12, 1980.

The USAF Scientific Advisory Board Space Division Advisory Group will

meet on October 30 & 31, 1980 at the Los Angeles Air Force Station, CA. The purpose of the meeting is to review Satellite Data Management, Global Weathering Systems Additional Data, and Space Based Radar. The Group will meet from 8:00 a.m. to 4:30 p.m. each day.

The meeting concerns matters listed in Section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Department at (202) 697-5404.

Carol M. Egan,

Air Force Federal Register, Liaison Officer.

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#### DEPARTMENT OF ENERGY

##### Bonnaville Power Administration

Dickens-Lingen School Lakes Transmission EIS Project Draft Supplement, Availability of Draft Supplement

Notice is hereby given that the Bonnaville Power Administration (BPA) for the Department of Energy, in compliance with the National Environmental Policy Act of 1969, has prepared and is distributing a Draft EIS Supplement on the transmission system for Dickens-Lingen School Lakes project. This supplement addresses potential environmental impacts associated with construction of proposed additional transmission facilities from Moore Substation, near Littleton, New Hampshire, to Webster Substation, near Franklin, New Hampshire.

These additional facilities (subtended for the original section from Cranke Substation near Montpelier, Vermont, to River Substation near Shelburne, Vermont) provide greater flexibility for development of transmission lines south, east, or west, and were necessitated by changes in load growth and changes in anticipated generating plant construction plans for the region. Integration of generation from the Dickens-Lingen School Lakes project into the New England power pool system can best be accomplished with a plan of service that includes the new extension. A map of the proposed transmission route is contained in the draft EIS supplement.

Copies of the draft supplement are available for public inspection at Department of Energy public document rooms located at

Library, FOI—Public Reading Room 4B-150, Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C.;

EPA, Washington, D.C., Office, Room 3352, Federal Building, 12th and Pennsylvania Avenue N.W., Washington, D.C.

Copies will also be located in 70 departments in New England; a complete list appears in the draft supplement.

The draft supplement is being furnished to Federal, State, and local agencies with environmental jurisdiction, and to those likely to be interviewed in, or affected by, the proposed program. Copies of the document are also being furnished to State and local clearinghouses and to other interested groups and individuals.

Single copies are available upon request contact Timothy J. Murry, Assistant Project Manager for Environmental Studies, Bonnaville Power Administration, P.O. Box 3621—ETAC, Portland, Oregon 97208.

Notice of public hearings on this document will be published in the Federal Register at a later date.

Dated at Washington, DC, this 18th day of September 1980.

George E. Bell,

Assistant Administrator.

PS Doc. 00-0000 Filed 9-23-80 9:44 AM  
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##### Economic Regulatory Administration

Canadian Crude Oil Allocation Program Allocation Notice for the Oct. 1 Through Dec. 31, 1980, Allocation Period

In accordance with the provisions of the Mandatory Canadian Crude Oil Allocation Regulations, 10 CFR Part 214, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues the allocation notice specified in § 214.12 for the allocation period beginning October 1, 1980.

The Canadian National Energy Board (CNEB) has informed ERA that, effective October 1, 1980, exports of crude oil from Canada will again be authorized on a quarterly basis. Therefore, in this notice, ERA sets the export levels of Canadian light and heavy crude oil for the months of October, November, and December 1980.

##### Redesignation of Priority Status

On April 17, 1980, the Department of Energy's Office of Hearings and Appeals (OHA) issued a Decision and order with respect to appeals filed by the Mobil Oil Corporation from four allocation notices